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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2008-45

11 **TONI MARIE SOUED**
10364 Boren Bega Drive
12 Kelseyville, CA 95451
Registered Nurse, License No. 438776

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

13
14 Respondent.

15 **FINDINGS OF FACT**

16 1. On or about August 14, 2007, Complainant Ruth Ann Terry, M.P.H., R.N.,
17 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department
18 of Consumer Affairs, filed Accusation No. 2008-45 against Toni Marie Soued (Respondent)
19 before the Board of Registered Nursing (Board).

20 2. On or about March 31, 1989, the Board issued Registered Nurse License
21 No. 438776 to Respondent. The license was in full force and effect at all times relevant to the
22 charges brought herein and will expire on December 31, 2008, unless renewed.

23 3. On or about August 21, 2007, Rowena R. Manalastas, an employee of the
24 Department of Justice, served by certified and first class mail a copy of Accusation No. 2008-45,
25 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
26 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
27 was P.O. Box 31, Myers Flat, CA 95554. A copy of the Accusation is attached as exhibit A, and
28 incorporated herein by reference.

1 4. Service of the Accusation was effective as a matter of law under the
2 provisions of Government Code section 11505, subdivision (c).

3 5. On or about August 31, 2007, Respondent signed and returned a Notice of
4 Defense requesting a hearing in this matter. The Notice of Defense reflected a change of address
5 to 10364 Boren Bega Drive, Kelseyville, CA 95451, which is Respondent's current address of
6 record with the Board. A Notice of Hearing was served by mail at Respondent's address of
7 record and it informed her that an administrative hearing in this matter was scheduled for January
8 15, 2008. Respondent failed to appear at that hearing.

9 6. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
12 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
13 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

14 7. California Government Code section 11520 states, in pertinent part:

15 (a) If the respondent either fails to file a notice of defense or to appear at the
16 hearing, the agency may take action based upon the respondent's express admissions or upon
17 other evidence and affidavits may be used as evidence without any notice to respondent.

18 8. Pursuant to its authority under Government Code section 11520, the Board
19 finds Respondent is in default. The Board will take action without further hearing and, based on
20 Respondent's express admissions by way of default, the Board finds that the allegations in
21 Accusation No. 2008-45 are true.

22 9. The total costs for investigation and enforcement are \$19,281.00 as of
23 January 14, 2008.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Toni Marie Soued has
26 subjected her Registered Nurse License No. 438776 to discipline.

27 2. The agency has jurisdiction to adjudicate this case by default.

28 3. A copy of the Accusation is attached.

4. The Board is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation:

a. Unprofessional conduct: false, grossly incorrect, or grossly inconsistent entries in hospital, patient, or other records pertaining to controlled substances in violation of Business and Professions Code (Code) section 2762, subdivision (e);

b. Unprofessional conduct: obtaining dangerous drugs and controlled substances by fraud, deceit, misrepresentation, subterfuge, or by the concealment of material facts, in violation of Code section 2762, subdivision (a);

c. Unprofessional conduct: possessing dangerous drugs and controlled substances without a prescription in violation of Code section 2762, subdivision (a);

d. Unprofessional conduct: gross negligence in violation of Code section 2761, subdivision (a)(1).

ORDER

IT IS SO ORDERED that Registered Nurse License No. 438776, heretofore issued to Respondent Toni Marie Soued, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 21, 2008.

It is so ORDERED March 21, 2008

La Francine W Tate

FOR THE BOARD OF REGISTERED NURSING

DEPARTMENT OF CONSUMER AFFAIRS

Attachment: Exhibit A [Accusation No.2008-45]

Exhibit A
Accusation No. 2008-45

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-45

13 **TONI MARIE SOUED**
14 P.O. Box 31
Myers Flat, CA 95554-0031

A C C U S A T I O N

15 Registered Nurse License No. 438776

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H, R.N (Complainant), brings this Accusation solely
19 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about March 31, 1989, the Board of Registered Nursing (Board)
22 issued Registered Nurse License Number 438776 to Toni Marie Soued (Respondent). The
23 license was in full force and effect at all times relevant to the charges brought herein and will
24 expire on December 31, 2008, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code (Code) unless
28 otherwise indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Code section 2761 provides, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

• • •

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

7. Code section 2762 provides, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

• • •

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

1 8. Code section 2770.11 provides:

2 (a) Each registered nurse who requests participation in a
3 diversion program shall agree to cooperate with the rehabilitation
4 program designed by a committee. Any failure to comply with the
5 provisions of a rehabilitation program may result in termination of
6 the registered nurse's participation in a program. The name and
7 license number of a registered nurse who is terminated for any
8 reason, other than successful completion, shall be reported to the
9 board's enforcement program.

10 (b) If a committee determines that a registered nurse, who
11 is denied admission into the program or terminated from the
12 program, presents a threat to the public or his or her own health
13 and safety, the committee shall report the name and license
14 number, along with a copy of all diversion records for that
15 registered nurse, to the board's enforcement program. The board
16 may use any of the records it receives under this subdivision in any
17 disciplinary proceeding.

18 9. Code section 4022 provides:

19 "Dangerous drug" or "dangerous device" means any drug
20 or device unsafe for self-use in humans or animals, and includes
21 the following:

22 (a) Any drug that bears the legend: "Caution: federal law
23 prohibits dispensing without prescription," "Rx only," or words of
24 similar import.

25 (b) Any device that bears the statement: "Caution:
26 federal law restricts this device to sale by or on the order of a
27 _____, "Rx only," or words of similar import, the blank
28 to be filled in with the designation of the practitioner licensed
29 to use or order use of the device.

30 (c) Any other drug or device that by federal or state law
31 can be lawfully dispensed only on prescription or furnished
32 pursuant to Section 4006.

33 10. Code section 4060 provides:

34 No person shall possess any controlled substance, except
35 that furnished to a person upon the prescription of a physician,
36 dentist, podiatrist, optometrist, veterinarian, or naturopathic
37 doctor pursuant to Section 3640.7, or furnished pursuant to a
38 drug order issued by a certified nurse-midwife pursuant to
39 Section 2746.51, a nurse practitioner pursuant to Section 2836.1,
40 a physician assistant pursuant to Section 3502.1, a naturopathic
41 doctor pursuant to Section 3640.5, or a pharmacist pursuant
42 to either subparagraph (D) of paragraph (4) of, or clause (iv)
43 of subparagraph (A) of paragraph (5) of, subdivision (a) of
44 Section 4052. This section shall not apply to the possession
45 of any controlled substance by a manufacturer, wholesaler,
46 pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,

1 veterinarian, naturopathic doctor, certified nurse- midwife, nurse
2 practitioner, or physician assistant, when in stock in containers
3 correctly labeled with the name and address of the supplier
4 or producer.

5 11. Health and Safety Code section 11173, subdivision (a), provides:

6 (a) No person shall obtain or attempt to obtain controlled
7 substances, or procure or attempt to procure the administration of
8 or prescription for controlled substances, (1) by fraud, deceit,
9 misrepresentation, or subterfuge; or (2) by the concealment of a
10 material fact.

11 12. Code section 125.3 provides that the Board may request the administrative
12 law judge to direct a licentiate found to have committed a violation or violations of the licensing
13 act to pay a sum not to exceed the reasonable costs of investigation and enforcement.

14 REGULATORY PROVISIONS

15 13. California Code of Regulations, title 16, section 1442, provides:

16 As used in Section 2761 of the code, "gross negligence"
17 includes an extreme departure from the standard of care which, under
18 similar circumstances, would have ordinarily been exercised by a
19 competent registered nurse. Such an extreme departure means the
20 repeated failure to provide nursing care as required or failure to
21 provide care or to exercise ordinary precaution in a single situation
22 which the nurse knew, or should have known, could have jeopardized
23 the client's health or life.

24 DRUGS

25 14. "Vicodin" is a compound consisting of acetaminophen and hydrocodone
26 and is a Schedule III controlled substance as designated by Health and Safety Code section
27 11056, subdivision (e)(4), and a dangerous drug within the meaning of Code section 4022.

28 15. "Belladonna and Opium suppositories" contain alkaloids, including
morphine, and are a Schedule II controlled substance as designated by Health and Safety Code
section 11055, and a dangerous drug within the meaning of Code section 4022.

FACTUAL BACKGROUND

16. During June 2005, Respondent worked as a traveling nurse at Novato
Community Hospital (NCH), located in Novato, California. On multiple occasions while

1 working at NCH, Respondent obtained controlled substances for patient administration by
2 accessing the hospital's Pyxis^{1/} system, failed to document or account for the administration or
3 disposition of those controlled substances, and falsified hospital records, as follows:

4 a. Patient #1. On or about June 2, 2005, at approximately 1517 hours,
5 Respondent obtained two Vicodin tablets for administration to Patient #1 and charted them as
6 given at 1630 hours. At approximately 2058 hours, Respondent obtained two more Vicodin
7 tablets. Thereafter, Respondent failed to properly document or otherwise account for the drug
8 disposition. Patient #1 reported she had received no Vicodin that day or during the patient's
9 hospital stay.

10 b. Patient #2. On or about June 2, 2005, at approximately 1539 hours,
11 Respondent obtained one Vicodin tablet for administration to Patient #2. She obtained a second
12 tablet at approximately 1540 hours. Respondent charted the tablets as given at "17" hours. The
13 nursing notes did not contain a pain assessment or reflect Patient #2's need for pain medication at
14 1700 hours. At approximately 1809 hours, Respondent obtained one Belladonna and Opium
15 suppository. She charted the suppository was given at "18" hours; however, nursing notes
16 indicate Patient #2 was discharged that day at approximately 1700 hours.

17 c. Patient #3. On or about June 6, 2005, at approximately 1633 hours,
18 Respondent obtained two Vicodin tablets for administration to Patient #3. Respondent
19 documented the Vicodin administration at approximately 1635 hours. Patient #3 denied
20 receiving Vicodin during the patient's hospital stay. Respondent charted in her nursing
21 assessments at 1600 and 1900 hours that Patient #3 "denies pain."

22 d. Patient #4. On or about June 6, 2005, at approximately 1659 hours,
23 Respondent obtained two Vicodin tablets for administration to Patient #4. Thereafter,
24 Respondent failed to properly document or otherwise account for the Vicodin.

25
26
27 1. Pyxis is a brand name for an automated medication dispensing and supply system. A PIN access code is
28 used to access controlled substances from the Pyxis system which automatically logs all transactions identifying
the name of the person accessing the system, the name of the patient for whom the substance has been obtained,
and the date, time and dosage being obtained.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct: False, Grossly Incorrect, Grossly Inconsistent Record Entries)

3 17. Respondent is subject to disciplinary action under Code section 2762,
4 subdivision (e), for unprofessional conduct in that she made false, grossly incorrect, or grossly
5 inconsistent entries in hospital, patient, or other records pertaining to controlled substances, as
6 described in paragraph 16, above.

7
8 **SECOND CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct: Wrongfully Obtaining Controlled Substances)

10 18. Respondent is subject to disciplinary action under Code section 2762,
11 subdivision (a), for unprofessional conduct in that, while working as a Registered Nurse, she
12 obtained dangerous drugs and controlled substances by fraud, deceit, misrepresentation,
13 subterfuge, or by the concealment of material facts, in violation of Health and Safety Code
14 section 11173, subdivision (a), as described in paragraph 16, above.

15
16 **THIRD CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct: Wrongful Possession of Controlled Substances)

18 19. Respondent is subject to disciplinary action under Code section 2762,
19 subdivision (a), for unprofessional conduct in that, while working as a Registered Nurse, she
20 possessed without a prescription dangerous drugs and controlled substances in violation of Code
21 section 4060. The circumstances are described in paragraph 16, above.

22
23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct: Gross Negligence)

25 20. Respondent is subject to disciplinary action under Code section 2761,
26 subdivision (a)(1), for unprofessional conduct in that she committed acts of gross negligence
27 within the meaning of California Code of Regulations, title 16, section 1442, as described in
28 paragraph 16, above.

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OTHER MATTERS

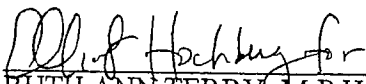
21. Respondent enrolled in the Board's Diversion Program on or about November 18, 2003, and was terminated as a public safety threat pursuant to Code section 2700.11, subdivision (b), on or about July 22, 2004, for failure to comply with program requirements.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 438776, issued to Toni Marie Soued;
2. Ordering Toni Marie Soued to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/14/07


RUTH ANN TERRY, M.P.H., R.N
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant